



Tom Barrett
Mayor, City of Milwaukee

July 18, 2012

Cathy Stepp, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921

Dear Secretary Stepp:

We write to seek clarification from your department regarding the Department of Natural Resources' review of the City of Waukesha's application for a diversion of Great Lakes water and its review of potential water suppliers. Milwaukee recognizes that the City of Waukesha faces a challenge providing a potable water supply to its residents and recently adopted Common Council Resolution No. 120230 directing our negotiating team to commence negotiations regarding a possible water service agreement and intergovernmental agreement for water service within the City of Waukesha's current water service area. We are certainly willing to negotiate with the City of Waukesha to see if there is a mutually satisfactory solution to address its problem.

We have been informally told that the DNR will not approve a diversion application in which water supply is limited to the City of Waukesha's current water service area and that a supplier must agree to provide service to a proposed future service area that has been delineated by the Southeastern Wisconsin Regional Planning Commission ("SEWRPC"). We are writing this letter in an attempt to reconcile this information with our interpretation of the Great Lakes Compact and Wisconsin's implementing statutes.

It is our understanding that the Great Lakes Compact and Wisconsin's implementing statutes permit a diversion to a community within a straddling county only if the community is without adequate supplies of potable water. We have based this interpretation on language found in Wis. Stat. §§ 281.343(4n)(c)1.a. and 281.346(4)(e)1.a. Further, we understand that a community within a straddling county must demonstrate that there is "no reasonable water supply alternative within the watershed in which the community is located, including conservation of existing water supplies..." Please refer to Wis. Stat. §§ 281.343(4n)(c)1.d. and 281.346(4)(e)1.d.

We have reviewed the City of Waukesha's diversion application and found that it speaks only of the city's lack of an adequate potable water supply. It does not address the conditions of the water supply of the other municipalities in the proposed future service area, and we are not aware that those municipalities have provided evidence that they lack an adequate potable water supply or that they have no reasonable water supply alternative per the requirements of the Compact. Would this inhibit Waukesha's diversion request from obtaining the unanimous approval of the Great Lake states' governors? Does the law require that the application contain an agreement with a water supplier that includes the entire proposed service area, even if all the municipalities in the area do not have potable water issues?

We are seeking confirmation of DNR's position that Waukesha's diversion application must include an agreement with a municipal public water utility to supply water not only to the City of Waukesha's current service area but also to the proposed future service area, regardless of the potable water supply issue mentioned above. What statute is the DNR relying on for this interpretation of the Compact and its implementing statutes? If that is the DNR's position, please explain how that can be reconciled with the restrictions on diversions to communities within a straddling county outlined above.

Regarding the proposed future service area plan, we understand that an application for a diversion of Great Lakes water "shall be consistent with an approved water supply service area plan under § 281.348..." per Wis. Stat. § 281.346(4)(e)1.em. The statutes outline a requirement that DNR establish administrative rules for the preparation of water supply plans. DNR's draft administrative rules regarding water supply planning have not yet been approved. Therefore, we understand that DNR has not approved the SEWRPC-delineated planned service area containing the expanded area.

Further, we are unclear whether the proposed water supply plan provided by Waukesha with its application for diversion met the statutory requirements for submittal to the DNR. Wis. Stat. § 281.348(3)(b)2. indicates that approval of the governing bodies of *each* municipality whose water supply is addressed by the plan is required *prior* to submitting the plan to the DNR. The Town of Waukesha has yet to approve the plan. Given these outstanding issues, can you clarify whether the City of Waukesha is currently operating under its existing water supply area or its proposed water supply area?

Further, we have received conflicting information regarding whether the proposed plan can be amended. Is an amendment possible? If so, by whom? And, using what process?

Even if DNR approves the SEWRPC-delineated planned service area, Wis. Stat. §§ 66.0813(3)(a) and (b); Wis. Stat. § 196.02. authorize each municipality owning a water public utility to determine whom it wants to sell water to and to negotiate acceptable terms that are subject to PSC approval. The PSC also has authority under § 196.49 to review certain public utility construction projects. This seems to conflict with the position the DNR has informally communicated regarding the requirements for our negotiations with Waukesha.

As you are aware, the City of Milwaukee negotiates with and supplies water to many municipalities. Each of our water service agreements delineates the water service area. The agreements also provide a process for negotiating the expansion of the contractual water service area to additional areas or municipalities. This is our preferred approach to negotiating these agreements and is the approach we feel best fits within the authority outlined above.

Additional questions we would like DNR to address include:

- Are conservation measures/plans required for each of the communities within the proposed service area in order for an application to be deemed sufficient under the Great Lakes Compact, and, if so, have you received those plans?
- Why wasn't a facilities plan for the service area build-out and return flow options included in the diversion request? Will that raise red flags with the other states?

We recognize this is a lengthy request. Many of these questions need to be resolved prior to moving forward with any supplier, be it Milwaukee, Oak Creek or Racine. It is our hope that you can help us quickly reconcile our lingering questions and concerns. We thank you for your attention to this important matter.

Sincerely,



Tom Barrett
Mayor



Willie L. Hines, Jr.
Common Council President

c: Eric Ebersberger, Chief, Water Use Section, DNR
John J. Schulze, Jr., Administrator, Division of Water, Compliance and Consumer Affairs, PSC
Dan Duchniak, General Manager, Waukesha Water Utility

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